

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

SIKORSKY SUPPORT SERVICES, INC.

Employer

and

Case 32-RC-5553

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 533¹

Petitioner

DECISION AND ORDER

The Employer has a contract with the U.S. Navy (herein the Naval Contract) to provide logistical support for the Navy's T-34 and other aircraft at the U.S. Naval Air Station at Fallon, Nevada. The Petitioner currently represents a unit of employees employed by the Employer at the Fallon facility on the T-34/44 Program as certified in Case 32-RC-4533, consisting of all full-time and regular part time aircraft mechanics, aircraft workers, and crew leaders, excluding all other employees, guards and supervisors as defined in the Act. Petitioner filed the instant petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to add by way of a self-determination election the previously unrepresented classification of lead aircraft mechanic to the existing unit. The Employer argues that the petition should be dismissed because Doug Barnes – the only lead aircraft mechanic at the Fallon facility - is a supervisor within the meaning of Section 2(11) of the Act.² A hearing officer

¹The Union's name appears as reflected on Board Exhibit 2.

² On April 3, 2008, the Employer filed a "Motion To Dismiss Petition For Representation" with the Region, asserting that the instant petition is procedurally incorrect and should be dismissed. That Motion is hereby denied. Where an incumbent union seeks to add a group of previously unrepresented employees to its existing unit, the Board conducts a self-determination election. See, e.g., *Warner-Lambert Co.*, 298 NLRB 993 (1990); *Mount Sinai Hospital*, 233 NLRB 507 (1977). In such cases, the voting group can consist of just one employee, inasmuch as the certified bargaining unit would be more than a one employee unit. *Chrysler Corporation*, 194 NLRB 183 (1971); *Armour & Company, d/b/a Memphis Cotton Oil Mill*, 115 NLRB 515 (1956) and cases cited therein.

of the Board held a hearing in a related matter and the parties previously filed post-hearing briefs.³

As discussed below, I have considered the evidence and the arguments presented and I have concluded, in agreement with the Employer, that lead aircraft mechanic Barnes is a supervisor within the meaning of Section 2(11) of the Act. Accordingly, I am ordering that the instant petition be dismissed.

OVERVIEW OF THE EMPLOYER'S OPERATIONS

From at least 1990 until around mid-2001, the Naval Contract was held by Raytheon Aerospace Support Service, a subsidiary of Raytheon Aerospace Company. Thereafter, the operation was sold to a company called Vertos Investments, d/b/a Vertex Aerospace LLC, which took over operation of the Naval Contract for about three years. Vertos Investments subsequently sold the operation to L3 Communications d/b/a L3 Vertex Aerospace LLC, which ran the operation for an additional two to three years. On July 1, 2006, the Employer purchased the operation and has serviced the Naval Contract ever since.

The Employer's headquarters for the Naval Contract is located at Whiting Field Naval Air Station, which is in Milton, Florida. The Employer operates nine satellite sites, which report to personnel at Whiting Field. One of the nine satellite sites is the U.S. Naval Air Station at Fallon, Nevada, which is the location involved in the petition in this matter. Scott White, whose title is Satellite Site/Engineer Manager, is responsible for the

³This case originated as a unit clarification petition filed by the Union in Case 32-UC-421 on July 25, 2007. A hearing was conducted in that case on October 3, 2007. On November 7, 2007, a Decision and Order issued dismissing the UC petition on the basis that the lead aircraft mechanic has been historically excluded from the unit and there have been no recent and substantial changes in the duties and responsibilities of the position. The Union then filed the instant RC petition on March 19, 2008, seeking to add the lead aircraft mechanic position into the existing unit by means of a self-determination election. Because the issue of the supervisory status of Barnes was fully litigated at the October 3, 2007 hearing in Case 32-UC-421, the Employer and the Petitioner have each stipulated in writing to utilize the transcript and exhibits from that hearing as the full and complete record in this case.

nine satellite locations. White is located at Whiting Field. He is responsible for the 35 to 40 employees employed by the Employer at the nine satellite locations. The parties are in agreement that White is a supervisor within the meaning of the Act.

**Petitioner's Collective Bargaining for the Fallon Satellite Site
and the Historical Composition of the Unit**

In November 1997, the Union was certified by the Board in Case 32-RC-4353 as the representative of the unit employees working on the T-34/44 Program at the Fallon facility. From November 1997 to date, there have been a series of collective bargaining agreements between the Union and the various employers that have operated the Fallon facility. On July 1, 2006, when the Employer successfully bid for the Naval Contract and took over operations of the nine satellite sites, it assumed the collective-bargaining agreement then in effect between Petitioner and L3 Vertex Aerospace covering the Fallon unit. In the summer of 2007, the Employer negotiated a new collective bargaining agreement with the Union which is effective by its terms for the period from July 23, 2007 through July 24, 2011. The recognition clause in this new contract remained unchanged from the corresponding clauses in the predecessors' agreements.

During the period from 1997 until 2003, the Naval Contract called for both logistical support and regularly scheduled maintenance to be performed by the unit employees in Fallon. During this period, the Fallon unit was composed of aircraft mechanic Rudy Maynez, aircraft mechanic Jim Chambers, aircraft worker Ernie Munroe, and several other unit employees whose names were not identified in the record. However, since 2003, routine maintenance is no longer being performed in Fallon. Instead, the unit work is limited to assisting in positioning planes after landing and before takeoff, refueling planes, tying down planes that are not taking off until the next day, and performing unscheduled repair work. As a result of this drop in the amount of unit work, since 2003 the unit at Fallon has consisted of only two employees – Chambers and

Munroe. Both Chambers and Munroe have been members of the Union since the Union was certified in 1997.

Doug Barnes' Work History At The Fallon Facility

Barnes has been employed at the Fallon satellite site since 1990 and has been the lead aircraft mechanic since at least 1994. As the lead aircraft mechanic, Barnes has been the highest ranking employee at the Fallon facility since 1994. During the entire period from the Union's certification in 1997 until the Employer took over the operation in July 2006, Barnes never joined the Union and he was never treated by either the Union or any of the various predecessor employers as if he was a member of the unit or covered by any of the collective bargaining agreements. According to the testimony of Union Business Agent Dan Montgomery, when he first began working for the Union in 1997, he just "assumed" that Barnes was a statutory supervisor because that was what he was told by both Raytheon and the unit employees. The Union continued to treat Barnes as a statutory supervisor and it dealt with him as the employer's step one grievance representative until negotiations began in 2006 for the current contract with the Employer. At that point, according to Montgomery, he looked into the issue for the first time and concluded that Barnes was not a supervisor within the meaning of Section 2(11) of the Act. As a result, during the bargaining in 2007 for the current contract, Montgomery raised the issue of including Barnes in the unit under the classification "crew leader." After the Employer rejected this proposal, the Union dropped the issue. Thereafter, when the parties reached agreement on the current contract, this contract contained a unit description unchanged from the unit that was first certified in 1997. Since this new contract went into effect, the Employer has continued to treat Barnes as a statutory supervisor who is outside the recognized unit. By this petition, the Union seeks to add Barnes to the existing unit by means of a self-

determination election. The issue before me is whether I should direct such an election, or dismiss the petition on the basis that Barnes is a statutory supervisor.

ANALYSIS

The Applicable Law

Section 2(11) of the Act defines a supervisor as one who possesses “authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” The possession of any one of these primary indicia of supervisory authority, as specified in Section 2(11) of the Act, regardless of the frequency of their use, is sufficient to establish supervisory status, provided that such authority is exercised in the employer's interest, and requires independent judgment in a manner that is more than routine or clerical. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000); *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981); *Queen Mary*, 317 NLRB 1303 (1995).

The party asserting that individuals are supervisors under the Act bears the burden of proving their supervisory status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 121 S.Ct. 1861 (2001); *Bennett Industries, Inc.*, 313 NLRB 1363 (1994); *Tucson Gas and Electric Co.*, 241 NLRB 181 (1979). To meet this burden the party asserting supervisory status must provide sufficient detailed evidence of the circumstances surrounding the alleged supervisor's decision making process in order to demonstrate that the alleged supervisor was exercising the degree of discretion or independent judgment that is necessary to establish supervisory status. Moreover, it is well settled that the designation of an individual as a supervisor by title in a job description or other documents is insufficient in and of itself to confer supervisory status.

Western Union Telegraph Company, 242 NLRB 825 (1979). On the other hand, possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., *Arlington Masonry Supply, Inc.*, 339 NLRB No. 99, slip op. at 3 n.10 (2003); *Pepsi Cola Co.*, 327 NLRB 1062, 1063 (1999); *Fred Meyer Alaska, Inc.*, 334 NLRB No. 94, slip op. at 4 n. 8 (2001). I turn now to the specific indicia.

In this case, it is undisputed that Barnes lacks the authority to hire, permanently transfer employees to another location, lay off, recall, promote, or to grant employees a wage increase. However, the record reflects and I find that Barnes is nevertheless a statutory supervisor because he has the authority to adjust employee grievances; to assign work; to responsibly direct employees; to reward employees by granting them time off, overtime, and flex shift bonuses, and/or to effectively recommend such actions, using independent judgment.

Adjusting Employee Grievances

The record evidence establishes that Barnes has the authority to adjust employee grievances. In this regard, the evidence shows that during the period from at least 1999 to 2004, when the Naval Contract was serviced first by Raytheon and then by L3 Vertex, Barnes was a statutory supervisor. In support of this conclusion, the record contains examples of five separate grievances filed by the Union during this five year period. Each of these grievances names Barnes as the unit employees' immediate supervisor. Moreover, Barnes signed each of the grievances on the line marked "Supervisor" reflecting that he received them at the step one level as the representative of the Employer. In addition, both Montgomery and Chambers (the Union steward at the time) admitted that the Union presented these grievances to Barnes at the step one level because they understood that he was the supervisor. Finally, the record contains a written step one response to each of these grievances signed by Barnes, acting as a

representative of the Employer, in which he denied the grievances as either lacking in merit or being improperly filed. Significantly, one of the five grievances alleged that the Employer violated the collective bargaining agreement by letting Barnes, a leadman, perform bargaining unit work. This grievance was eventually resolved by the Employer agreeing to pay backpay to the unit employees who should have been assigned this work. Another of the five grievances alleged that Barnes, as a supervisor, was violating the contract by not properly scheduling overtime work and out-of-town detachments.

Nevertheless, although the Union agrees that Barnes was a statutory supervisor during the period from at least 1997 to 2004, the Union contends that Barnes no longer possesses this supervisory authority. In support of this conclusion, the Union asserts that when the Employer took over servicing of the Naval Contract in 2006 and it extended an offer of employment to Barnes to continue working for it as an "Aircraft Mechanic-Lead," it never affirmatively told Barnes that it considered him to be a supervisor or even told him what his duties would be. On brief, the Union emphasizes this point by asserting that "Mr. Barnes has never been informed by Sikorsky Support Services that he is or will be a Supervisor as defined by the Act;" "during the hiring process Sikorsky Support Services did not inform him that he would be hired as a Supervisor over the other two employees;" "at no time during this process did the company refer to him as a supervisor;" and "there is no evidence that Mr. Barnes was hired as a Supervisor nor was there any verbal or written communication on the subject of exactly what his scope of authority and degree of discretion that he would be permitted to exercise (would be)." Instead, the Union notes that Barnes' current job title is "Aircraft Mechanic Lead" - not "supervisor." Finally, the Union points out that because it has not filed any grievances since the Employer took over the Fallon operation in 2006, there has been no opportunity to test whether the Employer, just like its

predecessors, has imbued Barnes with the authority to act as it's step one grievance representative.⁴

I find that the Union's argument in this regard lacks legal merit. First, it is well-established that in determining supervisory status, an employee's job title is not controlling. Rather, it is the employee's actual job duties and the scope of his authority that control. *Western Union*, supra. Therefore, the fact that the Employer has not officially changed Barnes' job title to "supervisor" is of no import, especially since Barnes held the same job title (Aircraft Mechanic-Lead) when he worked for both Raytheon and L3 Vertex and Union agrees he was a statutory supervisor at that time. Second, there is absolutely no evidence in the record affirmatively establishing that the Employer reduced the scope of Barnes' authority after it took over the Fallon operation. To the contrary, both the Union and the Employer witnesses testified consistently that nothing changed at the Fallon facility after the Employer took over in 2006; that there were only minor differences between the way the Employer and the predecessor companies operated the facility; and that Barnes has not changed the way he does business or his work or his duties and responsibilities. Finally, although Barnes has not had occasion since 2006 to serve as the Employer's step one grievance representative, the Employer's witnesses testified that he still possesses this authority. Under these circumstances, Board law is clear that possession of the authority to adjust grievances is sufficient to establish supervisory authority even if this authority has not yet been exercised. *Arlington Masonry*, supra. As a result, I find that the Union's argument that Barnes somehow lost

⁴ The Union also argues that when Barnes served as the step one grievance representative for both Raytheon and L3 Vertex, he only served as a conduit to relay grievances from the Union to the satellite site manager in Florida and responses from the manager to the Union. However, any argument that Barnes lacked supervisory authority because he only served as a conduit is belied by the fact that Montgomery and Chambers (and even Barnes himself) represented at the hearing that they considered Barnes to be a supervisor during this period.

his previous supervisory authority when the Employer took over the Fallon operation to be mere speculation unsupported by any record facts.

Responsible Direction Of The Work

Another primary indicia of supervisory status possessed by Barnes is the authority to responsibly direct the work. In this regard, it is undisputed that Barnes is the highest ranking person at the Fallon facility and he is ultimately responsible for the work that the unit employees perform. The record shows that when the employees first report to work in the morning, they divide up the work assignments between them. Although all three employees at the Fallon facility are long term employees who generally know what needs to be done and how to do it, Barnes is ultimately responsible for prioritizing the work assignments, assigning them to the mechanic who is most skilled at that particular task, and reassigning the tasks if the need arises. In addition to assigning work, Barnes spends about 90% of his time inspecting the work of the other two mechanics to see if they have done it correctly. By contrast, only about 10 percent of Barnes' work time is spent independently doing work.⁵ As part of his inspection duties, if Barnes sees that the other mechanics are not performing their tasks correctly, he is responsible for telling them to follow proper procedure. Barnes will then provide the employees with any necessary training to correct their work deficiencies and he has the authority to issue

⁵ This finding alone distinguishes the instant case from one of the two cases cited by the Union on brief - *NLRB V. McEver Engineering*, 784 F.2d 634 (5th Cir. 1986). In *McEver*, a leadman who spent 90 percent of his time performing manual work alongside his crew was found not to be a statutory supervisor. In addition, unlike the leadman in *McEver*, Barnes routinely assigns overtime and grants time off. The only other case cited by the Union on brief was *NLRB v. Lindsay Newspaper, Inc.*, 315 F.2d 709 (5th Cir. 1963). In that case, the Board found that an employee who was in charge of the mailroom on the one night a week that an admitted supervisor was not working was not a statutory supervisor because there was no evidence that he possessed any of the Section 2(11) supervisory indicia on the night he was in charge, and he had to perform all of his regular non-supervisory work as well. This is clearly distinguishable from the instant case where Barnes spends 90 percent of his time inspecting the work of unit employees and, under the contract, he is forbidden from performing unit work.

verbal and written warnings if mistakes continue to be made.⁶ Significantly, if Barnes is found not to be a statutory supervisor, then the Fallon employees will be working without supervision since they are several thousand miles from and effectively beyond the reach of the Employer's admitted supervisors in Florida and Connecticut.⁷ This is not a result that the Board and the Courts favor. See, e.g., *Laser Tool, Incorporated*, 320 NLRB 105 (1995) and *Schnuck Markets v. NLRB*, 961 F.2d 700, 706 (8th Cir. 1992), and cases cited therein.

The Authority To Reward Employees

Although wage increases are determined by the collective bargaining agreement, Barnes does possess the authority to reward unit employees in other ways. For example, Barnes has the authority to grant employee requests for time off; he approves and signs off on employee timesheets that are used to determine their pay; he decides if employees should be assigned to "temporary alternate work" outside their normal work schedule which results in them receiving a 50 cents per hour bonus; and he assigns employees to work overtime at time-and-a-half pay if required by the flight schedules.⁸

⁶ There is no evidence that the verbal and written warnings that Barnes can issue on his own initiative have any adverse impact on unit employees' terms and conditions of employment. In this regard, the record establishes that Barnes lacks the authority to issue more severe discipline, such as a suspension or termination on his own authority. Instead, Barnes is required to report the underlying infractions to his superiors in Connecticut and Florida, who make the ultimate decision. However, the record also shows that Barnes' superiors rarely visit the Fallon site and there is no evidence that they would conduct an independent investigation when Barnes reports incidents that he believes warrant discipline. Therefore, while this evidence is not dispositive, I find that the evidence concerning Barnes' role in the disciplinary process lends some support to the supervisory finding I have made herein.

⁷ In this regard, the record shows that Satellite Manager White has visited the Fallon facility on only one occasion since the Employer took over the servicing of the Naval Contract. This visit, which was back in 2006 when the Employer first took over the Naval Contract, entailed White doing little more than introducing himself to the employees. Moreover, while White is available by telephone, the Union's witnesses admitted that they rarely speak to White and they never discuss with him day to day issues like taking time off from work, overtime, or work tasks. To the contrary, even when Barnes is off work, the other employees call him by telephone when they have work related issues.

⁸ On brief the Union argues that Barnes lacks the authority to assign overtime work or to schedule employees to work a flex shift because the need for this work is determined by the Navy's flight schedule. However, this argument misses the point. While the need for overtime or flex shifts is undoubtedly determined by the daily flight schedules, it is Barnes who is ultimately responsible for

Secondary Indicia Of Supervisory Status

While not determinative, the Board and the Courts often look to the presence of secondary indicia in resolving supervisory status. *NLRB v. Chicago Metallic Corp.*, 794 F.2d 527, 531 (9th Cir. 1986). An examination of the instant record reveals that Barnes possesses several important secondary indicia. For example, he wears a different uniform and receives a different pay rate than the unit employees (his wage rate was approximately 10 percent higher at the time he was hired by the Employer). He also receives different benefits than the unit employees, including a different health plan; he trains the other employees; he acts as the Employer's on-site representative in dealing with the Navy; and he has the authority to spend up to \$200 in petty cash to purchase needed supplies without getting approval from White. I conclude that these secondary indicia of supervisory authority, considered together, further bolster my conclusion that Aircraft Mechanic-Lead Barnes is a supervisor within the meaning of Section 2(11) of the Act.

On the basis of the foregoing, having considered and rejected all of the arguments to the contrary,⁹ I conclude that Aircraft Mechanic-Lead Barnes is a statutory supervisor.

reviewing these schedules, seeing if overtime or flex shifts are needed, and then assigning either Chambers or Munroe to work those flex or overtime hours.

⁹ In particular, I reject the arguments raised by both the Employer and the Union that I am bound by prior decisions of this Region in unrelated cases regarding the supervisory status of lead mechanics at the Employer's other satellite facilities. It is well-established that every representation decision turns on its own unique facts, and even a cursory examination of those prior decisions reveals significant differences in the authority and responsibilities of those lead mechanics compared to the duties and responsibilities of Barnes. Accordingly, any determination reached in those prior proceedings is not determinative herein. *Dole Fresh Vegetables, Inc.*, 339 NLRB 785 (2003). It is for this same reason that I reject as legally irrelevant the Union's argument that I should take into account the fact that the lead mechanics at certain other satellite facilities are covered under the terms of collective bargaining agreements at those facilities. As an additional reason for rejecting this argument, I note that there is simply no evidence in this record establishing whether these lead mechanics were included in their units by the Board or by voluntary agreement of the parties. A voluntary agreement to include a classification in a unit is not binding on the Board. *Hale Container Line, Inc.*, 291 NLRB 1195 (1988).

ORDER

Accordingly, the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on April 18, 2008. This request may be filed electronically through E-Gov on the Board's web site, www.nlrb.gov,¹⁰ but may **not** be filed by facsimile.

DATED AT Oakland, California, this 4th day of April, 2008.

/s/ Alan B. Reichard
Alan B. Reichard
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National Labor Relations Board
Region 32
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32-1338

¹⁰ To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlrb.gov.